



NEW YORK STATE SENATOR

John J. Flanagan

Open Letter From Senator Flanagan Regarding LIPA

JOHN J. FLANAGAN July 23, 2013

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Dear Huntington Resident:

I write to provide you with relevant and important information regarding recently passed legislation that seeks to address numerous concerns and complaints about the Long Island Power Authority (LIPA). The lengthy details provided herein are necessary to ensure a thorough overview of all the intricate issues involved.

Several actions have been taken by Governor Cuomo, the Legislature, and LIPA officials to improve LIPA's service and reliability, and to provide the Town of Huntington with a possible option for settling a critically important tax grievance case. While the two issues are linked by the commonality of LIPA, one is not dependent on the other.

After months of public hearings and consultations with interested parties, the Governor's Program Bill (Senate bill 5844/ Assembly bill 8073) was overwhelmingly passed by the Legislature on June 20, 2013. Under the provisions of the legislation, LIPA will be restructured to significantly reduce its size and limit its role to a public holding company. This will enable LIPA to maintain both its tax exempt status and eligibility for federal disaster reimbursement in the event of future storm damage to Long Island's power system; thereby avoiding additional rate increases to pay for storm repairs.

In addition, the legislation will transfer control of LIPA's utility operations to a private utility service provider, Public Service Enterprise Group (PSEG), provide greater accountability and oversight of utility operations through a newly established Long Island office of the Public Service Commission (PSC), and produce savings that will freeze utility rates in 2013, 2014 and 2015. It is expected that these actions will help to stabilize electric rates, provide more

reliable service and enhance communication with homeowners and businesses.

Separate and apart from the legislation, but even more critical to Huntington residents, is a proposal that was developed by the Governor's office to resolve an outstanding tax assessment case in the Town, which is referred to as a "tax certiorari" proceeding. As you may know, LIPA filed a lawsuit against the Town in 2010 challenging the assessed value of its Northport power plant. Based on the current assessed value of the plant, LIPA pays nearly \$75 million in annual property taxes to the Town, of which \$53 million goes to the Northport-East Northport School District alone. Should LIPA win in court and the Town lose, tax payments to the Town and the school district would be drastically reduced *immediately*, and LIPA would be owed an *immediate* refund of hundreds of millions of dollars in back taxes, plus interest.

Recently, the Town was given a settlement offer by LIPA and has four months to accept or decline this proposal. The offer would *eliminate* any back taxes the Town owes to LIPA from the date the lawsuit was filed in 2010 to present (currently estimated at \$170 million and expected to grow as high as \$250 million by October); maintain LIPA's current \$75 million tax payment for at least the next two years; then provide for a gradual reduction of tax payments by LIPA over a 10-year period. This phased-in strategy would resolve the lawsuit, protect the Town from further litigation, significantly limit the financial exposure to taxpayers, and allow the affected entities time to develop a long term strategy that addresses the changes in LIPA tax revenue. If the Town chooses not to accept the offer and instead pursues its litigation with LIPA, the Town would be embroiled in an expensive and protracted court case, with the potential to ultimately lose, which as mentioned above would result in an immediate repayment of hundreds of millions of dollars to LIPA.

The Town of Huntington is not alone in this situation. LIPA has filed similar tax challenges against the Town of Brookhaven and the County of Nassau for over assessments of its power plants in Port Jefferson, Island Park and Glenwood Landing. The municipalities involved in these court actions have been offered the same option of settling their respective cases to ensure any tax reductions on these properties are achieved through the implementation of a controlled, steady and predictable plan.

The Governor's Program Bill (Senate bill 5844/ Assembly bill 8073) also provides language that could help to mitigate the impact of any tax reductions by allowing for the potential repowering and upgrading of these existing power plants if it is determined to be in the best interests of the ratepayers. If repowering were to occur at the Northport plant, it would not only generate greater efficiencies and savings for ratepayers, but would also generate greater tax revenues for the Town of Huntington and the Northport-East Northport School District.

Finally, it is important to note that after reviewing utility tax certiorari cases statewide, it is clear that utility companies overwhelmingly prevail in court, with devastating and profound financial impacts on local communities and school districts. Equally as important, the longer this disputed tax litigation goes unresolved, the greater the exposure there will be to taxpayers since the amount of back taxes owed to LIPA will continue to grow exponentially.

Long Islanders have long been burdened by some of the highest utility rates in the nation and have endured frustratingly unreliable service, particularly in the wake of Superstorm Sandy and other natural disasters. The LIPA legislation is a comprehensive plan to improve service and keep rates down for all LI residents.

The separate offer from LIPA to the Town of Huntington to settle the tax case provides an opportunity to protect the Town, the Northport-East Northport School District and its taxpayers from a potentially devastating court decision. However, I am fully aware that the decision for pursuing any action on this legal matter ultimately rests with the Supervisor and Town Board Members of the Town of Huntington.

I will continue to listen to the concerns of all my constituents in Huntington who may be impacted by this issue, and I appreciate your ongoing input as the Town considers how to proceed in this matter.

Sincerely,

John Flanagan